

UNITED STATES TAX COURT

WASHINGTON, DC 20217

LARRY F. ANDERSON,

Petitioner,

V.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Docket No. 2955-11L

ORDER

This collection due process (CDP) case is before the Court after remand to respondent's Appeals Office (IRS Appeals) for conduct of a supplemental CDP hearing and issuance of a supplemental notice of determination.

After the initial CDP hearing, the parties submitted the case to the Court fully stipulated under Rule 122. In its Memorandum Opinion, T.C. Memo. 2013-261, filed November 18, 2013, this Court explained that the administrative record did not provide sufficient information to enable the Court to determine whether IRS Appeals had abused its discretion in rejecting petitioner Larry F. Anderson's amended offer in compromise (OIC) amount of \$37,500. Mr. Anderson had proposed that his OIC be accepted on either of two alternative grounds: promotion of effective tax administration, or doubt as to collectibility-special circumstances, with the special circumstance being his age and health. At the time of the hearing, Mr. Anderson was 74 years old and suffering from diabetes and prostate cancer that had spread to his bones, among other ailments.

In its Memorandum Opinion, the Court specifically identified four issues--including whether IRS Appeals had properly considered Mr. Anderson's age and health in rejecting his doubt as to collectibility-special circumstances offer--with respect to which the administrative record was inadequate. Citing these reasons, by Order dated November 20, 2013 (remand order), the Court remanded the case

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to IRS Appeals for conduct of a supplemental hearing and issuance of a supplemental notice.

Having received and reviewed the supplemental notice and narrative attachment, the Court concludes that they do not comply with its remand order. These documents do not adequately address three of the four informational gaps in the record identified in the Court's Memorandum Opinion, specifically:

(1) Whether IRS Appeals properly considered Mr. Anderson's health in rejecting the doubt as to collectibility-special circumstances and effective tax administration offers;

(2) Whether the settlement officer who handled the CDP hearing made any determination as to whether Mr. Anderson's residence, title to which was held in a trust of which he is a one-fifth beneficiary, qualified as a dissipated asset that could properly be treated as an asset of Mr. Anderson; and

(3) Whether the settlement officer had considered Mr. Anderson's ownership rights under the terms of the trust instrument in assigning a value to his interest.

On September 15, 2014, we ordered respondent to show cause why the case should not be remanded once again for compliance with the remand order. Although respondent (and petitioner, in initial and supplemental status reports) complained of communication and production difficulties that had hampered efficient conduct of the supplemental hearing, respondent failed to point to any evidence that the issues identified in the Court's Memorandum Opinion had been considered. The Court held a conference call with the parties on October 30, 2014, during which the Court advised the parties of its intention to remand the case a second time.

We remand a CDP case to IRS Appeals when the taxpayer did not receive a proper hearing or when we determine that a further hearing is necessary and will be productive. See Lunsford v. Commissioner, 117 T.C. 183, 189 (2001); Lites v. Commissioner, T.C. Memo. 2005-206, slip op. at 22-23. In some instances, where uncertainty remains or the record indicates that the taxpayer has still not received a proper hearing, we may remand a second time. See, e.g., Macdonald v. Commissioner, T.C. Memo. 2014-42; Antioco v. Commissioner, T.C. Memo. 2013-35.

We typically remand a case after trial. Here, for example, we issued our Memorandum Opinion and initial remand order after the case had been called for trial, and the parties had submitted it under Rule 122. At this point, however, a second trial would be unproductive unless and until the issues identified in the Court's Memorandum Opinion, as incorporated by the remand order, have been addressed in the supplemental notice. Accordingly, we will afford the parties a second opportunity to comply with the remand order. See generally Williams v. Commissioner, 119 T.C. 276, 282 (2002) (describing inherent powers of the Tax Court to regulate proceedings before it, including by sanctioning parties for non-compliance with the Court's rules); Westreco, Inc. v. Commissioner, T.C. Memo. 1990-501, 60 T.C.M. (CCH) 824, 836-837 (1990), *aff'd* 923 F.2d 854 (6th Cir. 1991) (describing Tax Court's inherent powers "in the discharge of its judicial functions"). In light of the parties' representations concerning communication and production difficulties, we will spell out our expectations.

First, the Court anticipates that any supplemental notice of determination issued after this remand will explain the following, in light of the evidence currently in the administrative record and any additional evidence provided by petitioner upon remand:

(1) The effect, if any, of Mr. Anderson's age and health on IRS Appeals' decision to accept or reject his OIC on the grounds of either doubt as to collectibility-special circumstances or effective tax administration;

(2) If Mr. Anderson's residence, title to which is held in a trust of which he is a one-fifth beneficiary, is to be treated as an asset of Mr. Anderson, the reasons for treating the residence as a dissipated asset; and

(3) If Mr. Anderson's interest in his residence is to be treated as an asset of Mr. Anderson, the effect of his ownership rights under the terms of the trust instrument and of his minority interest on the valuation of that interest.

Second, because petitioner proposes to amend his OIC amount to \$23,104 on the basis of changed financial circumstances, and because a not insignificant period of time has passed since petitioner previously submitted comprehensive medical and financial information to IRS Appeals, we anticipate that petitioner will provide written notice to IRS Appeals of the OIC amendment, specifically referencing his previously-submitted Form 656, Offer in Compromise, as well as updated information concerning his current health and financial circumstances.

Third, on the basis of our conference call with the parties, we anticipate that the parties will work cooperatively and with alacrity to meet the deadlines established in this Order, to which they have agreed.

In light of the foregoing, it is hereby

ORDERED: that this case is remanded to respondent's Appeals Office for a supplemental administrative hearing, either face-to-face or via correspondence as agreed between the parties, to be conducted at a mutually agreed upon date, time, and place, but in any event no later than January 31, 2015. It is further

ORDERED: that the settlement officer assigned to conduct the supplemental hearing shall request any additional information required from petition in writing, with specificity, no later than February 28, 2015. It is further

ORDERED: that petitioner shall submit any information he desires to supply in response to the settlement officer's request no later than March 31, 2015. It is further

ORDERED: that respondent's Appeals Office shall issue a supplemental notice of determination no later than April 30, 2015. It is further

ORDERED: that on or before May 14, 2015, the parties shall either submit properly executed stipulated decision documents or each shall file with the Court, with service on the other party, a report regarding the status of this case after the supplemental administrative hearing, and including as an attachment thereto a copy of respondent's supplemental notice of determination.

(Signed) Robert A. Wherry
Judge

Dated: Washington, D.C.
October 31, 2014